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IN THE
SUPREME COURT OF THE
UNITED STATES

October Term, 1970

No. 1418

FRANK JOSEPH SANDOVAL and
JAMES VIGIL,

Petitioners and Appellants,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA, THE PEOPLE OF LOS ANGELES, a Municipal Corporation, ROGER ARNEBERGH, City Attorney thereof, EDWARD DAVIS, Chief of Police thereof, COLLIER McDERMON, The MUNICIPAL COURT OF LOS ANGELES JUDICIAL DISTRICT and THE HON. JUDGE DAVID J. AISENSON,

Respondents.

BRIEF OF RESPONDENT IN OPPOSITION TO GRANTING OF WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether persons arrested for disturbing

a public assembly and disturbing the peace come within the purview of the Civil Rights Removal Statute (Title 28, United States Code, §1443) where their simultaneous conduct consisted of interrupting and stopping the State Governor's speech at a formal banquet, which banquet was part of a conference concerned with Mexican-American educational problems and where those arrested were attempting to display their objections to alleged Mexican-American discrimination in state schools.

STATEMENT OF FACTS

The Third Annual Nuevas Vistas Conference, held at the Biltmore Hotel in Los Angeles, California, was called and sponsored by the California Department of Education for the purpose of discussing the problems of Mexican-American education. (Record of Appeal [hereafter RA], pp. 28-29). As part of the overall program a formal banquet was held at which California Governor Reagan was the featured speaker. (RA, p. 38.) Between 500 and 600 persons bought tickets for the banquet and were present for the Governor's address. (RA, p. 93.)

During the Governor's speech, petitioners, together with several other persons, simultaneously stood up and started clapping and shouting. This group moved from their seats to the dance floor in front of the speaker's

table and continued to shout and clap in unison. The noise created by this group caused the Governor to stop speaking before he had intended to. (RA, p. 93.) The petitioner's reasons for this conduct was alleged to be dissatisfaction with the content of the Governor's speech and to protest Mexican-American discrimination in California educational opportunities. (RA, pp. 23-25.)

A citizens arrest was made of petitioners and others by a person seated at the speaker's table, and all of those so arrested were escorted from the banquet room. (RA, p. 93.) Complaints were filed alleging that petitioners violated California Penal Code §403, disturbing a public assembly or meeting, and §415, disturbing the peace.

PETITIONERS CANNOT BRING THEIR SITUATION WITHIN THE PARAMETERS OF THE CIVIL RIGHTS REMOVAL STATUTE

Petitioners continue to claim that their demonstration, during the Governor's speech, protesting alleged Mexican-American educational discrimination, is the type of civil rights activity protected from state prosecution and removable to federal court by the Civil Rights Removal Statute. Respondent contends, and as the Ninth Circuit Court of Appeal held (see California v. Sandoval, 434 F. 2d 635 [1970]),

the civil wrongs of which petitioners complain, even if true, are not the specie of wrong which permits removal of their case to federal court.

Petitioners were charged with criminal violations for their deliberate disturbance of a public assembly. Regardless of the validity, if any, of the claims of educational discrimination in California public schools, such alleged discrimination does not give petitioners license to disrupt a formal public meeting and banquet with immunity from misdemeanor prosecution.

This Court in 1966, in two companion cases, Georgia v. Rachel, 384 U.S. 780, 16 L.Ed. 2d 925, and Greenwood v. Peacock, 384 U.S. 808, 16 L.Ed. 2d 944, set forth the criteria which all petitions for removal must satisfy to justify removal of a case to federal court. Petitioners must show that they are to be prosecuted for conduct or activities that are protected by specific civil rights stated in terms of racial equality, and it must be shown that the state courts will not protect that right because of some hostile state statute or constitutional provision. Petitioners have wholly failed to satisfy either of the dual requirements to warrant removal of their case to federal court.

They have failed because the federal Civil Rights Act, or any other federal act, which commands equal educational opportunities, does not authorize the deliberate disturbance of a public meeting and the public peace in an attempt to display their dislike with what they

consider to be educational discrimination. Similarly, and equally fatal to their cause, petitioners have not and cannot point to any hostile California statute or constitutional provision which directs California courts to ignore their equal racial civil rights. To paraphrase the Court in Greenwood v. Peacock, 384 U.S. at 826-7, 16 L.Ed. 2d at 956: First, no federal law confers an absolute right on private citizens--on civil rights advocates, on Mexican-Americans, or on anybody else--to disturb or break up a public assembly or to disturb the peace. Second, no federal law confers immunity from state prosecution on such charges. Thus petitioners have consistently failed to carry their burden of asserting that their situation meets and satisfies both requirements of §1443(1) of the Removal Statute.

Petitioners assert that their state prosecution would violate their rights under the First, Fifth, and Fourteenth Amendments of the federal constitution is also without merit. In Georgia v. Rachel, supra, 384 U.S. at 792, 16 L.Ed. 2d at 933-4 this Court pointed out that the broad provisions of these constitutional guarantees apply to all persons, rather than securing the equal racial civil rights that the Civil Rights Removal Statute requires.

CONCLUSION

The Petition for Writ of Certiorari does not disclose a clear and convincing showing that there has been, or will be, a violation of petitioners' equal racial civil rights, nor does it show that the Court of Appeal has decided an important question of federal law which has not been settled by this Court; nor has the Court of Appeal decided a federal question in a way conflicting with decisions of this Court.

Respondent prays that the petition be denied.

Respectfully submitted,

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